

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
No. 5:22-CT-03135-M

DAVID MEYERS, )  
                        )  
Plaintiff,         )  
                        )  
v.                     )  
                        )  
UNITED STATES OF AMERICA, )  
                        )  
Defendant.         )

ORDER

On April 18, 2022, David Meyers (“plaintiff”), filed *pro se* what appears to be a complaint under the Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§ 2671–80. See Compl. [D.E. 1].

On April 19, 2022, the court directed plaintiff to file an application to proceed without prepayment of fees or pay the filing fee, and warned him that the court may dismiss the action without prejudice for failure to prosecute if he fails to do so within 21 days. See Order [D.E. 3].

On May 17, 2022, because plaintiff had failed to comply with the court’s April 19, 2022, order of deficiency within the time provided, the court dismissed the action for failure to prosecute, directed the clerk to close the case, and entered judgment. Order [D.E. 4]; J. [D.E. 5].

On May 19, 2022, plaintiff filed what the court construes as a motion for reconsideration. Mot. [D.E. 6] (noting an application to proceed without prepayment of fees was placed in the mail).

On May 26, 2022, plaintiff moved the court, “requesting permission to speak with the Court U.S. Judges En Banc for Judicial Relief to be granted and for the U.S.C.A. 4<sup>th</sup> Circuit Chief Judge Roger Gregory to Participate in this Request for Judicial Relief (Deliberation) en banc hearing [sic].” See Mot. [D.E. 7] (requesting a hearing, alleging “imminent danger,” and asserting his outgoing legal mail, including forms to proceed without prepayment of fees, were confiscated).

On May 27, 2022, plaintiff moved for relief and for the case to be reopened. See Mot. [D.E. 8] (asserting, among other things, his application to proceed without prepayment of fees was placed in the prison mail, but Scotland C.I. employees are “obstructing” his correspondences).

The decision to alter or amend a judgment is within the sound discretion of the court. Dennis v. Columbia Colleton Med. Ctr., Inc., 290 F.3d 639, 653 (4th Cir. 2002). Although the court finds the post-judgment filings somewhat response to the order of deficiency, the court also notes that plaintiff still has neither paid the filing fee, nor filed an application to proceed without prepayment of fees, and he did not file his complaint on the forms prescribed for use by the court.

Accordingly, the court, in its discretion: DEEMS plaintiff's May 19, 2022, motion a timely response to the order of deficiency; GRANTS IN PART the motion to the extent plaintiff seeks reconsideration of the court's prior order dismissing the action for failure to prosecute [D.E. 6]; DENIES as premature the motion for a hearing [D.E. 7]; GRANTS IN PART the motion seeking to reopen the case [D.E. 8]; and DIRECTS the clerk to re-open the case and to send plaintiff both the forms for filing an FTCA complaint and an application to proceed without prepayment of fees.

The court further: DIRECTS plaintiff, not later than June 27, 2022, to file his complaint on the correct forms and to either file the application to proceed without prepayment of fees, or pay the filing fee; and WARNS plaintiff that, if he fails to comply with this order within the time provided, the court will dismiss this action without prejudice for failure to prosecute.

SO ORDERED, this 27<sup>th</sup> day of May 2022.



RICHARD E. MYERS II  
Chief United States District Judge